

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 2. ADMINISTRATION

#### CHAPTER 5.1. STATE PERSONNEL BOARD

*Editor's Note: The following Notice of Proposed Rulemaking was exempt from Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 2620.)*

[R13-137]

#### PREAMBLE

- 1. Article, Part, or Section Affected (as applicable)**

R2-5.1-101	Amend
R2-5.1-102	Amend
R2-5.1-103	Amend
R2-5.1-104	Amend
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. § 41-782(C)  
Implementing statute: A.R.S. §§ 41-781, 41-782, 41-783, and §§ 38-531, 38-532, 38-533, 38-534
- 3. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:**

Notice of Rulemaking Docket Opening: 19 A.A.R. 1742, July 5, 2013
- 4. The agency's contact person who can answer questions about the rulemaking:**

Name:	Laurie Barcelona
Address:	State Personnel Board 1400 W. Washington St., Suite 280 Phoenix, AZ 85007-2939
Telephone:	(602) 542-3888
Fax:	(602) 542-3588
E-mail:	laurie.barcelona@personnel.az.gov
Web site:	www.personnel.az.gov
- 5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

In response to a Five Year Review report approved by the Governor's Regulatory Review Council on May 7, 2013, the Personnel Board decided to make some changes to its rules. The changes include amending the Board's rules to make them more clear, concise, and understandable and consistent with statute and Board practices; deleting repetitive and unnecessary language; adding, amending, and defining more terms used in the rules; combining or deleting subsections; adding language allowing the use of electronic means to distribute documents; adding language that will clarify procedures related to burden of proof, failure to appear for hearings, exchanging exhibits and witness lists, requesting and serving subpoenas, utilizing telephonic testimony, withdrawing appeals and complaints, requesting a change of hearing officer, and time requirements for hearings. The rulemaking will reorganize subsections to allow for a better flow of information.
- 6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely**

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**on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

No studies were reviewed or relied upon by the Board relevant to the rules.

**7. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

**8. The preliminary summary of the economic, small business, and consumer impact:**

It is anticipated that the rules will not impact small businesses or consumers since the proposed rulemaking is intended to clarify existing appeal and complaint processes already being following by the Board. It will not impose any reporting, bookkeeping, or compliance requirements on small businesses. The proposed rules' impact on the Board, the Secretary of State's Office, and the Governor's Regulatory Review Council for the rulemaking process will be the usual rulemaking-related costs, which are minimal. The public will benefit because the rules will be less confusing to apply and may reduce monies spent on postage since the rules will allow for electronic filing of documents.

**9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:**

Name: Laurie Barcelona  
Address: State Personnel Board  
1400 W. Washington St., Suite 280  
Phoenix, AZ 85007-2939  
Telephone: (602) 542-3888  
Fax: (602) 542-3588  
E-mail: laurie.barcelona@personnel.az.gov  
Web site: www.personnel.az.gov

**10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

The Board, at the July 24, 2013, Board meeting, scheduled oral proceedings to take place subsequent to the August Board meeting. The oral proceedings will be scheduled some time in September or October 2013. Notice will be provided, or persons may contact the individual identified above for further information.

**11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

Not applicable.

**a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

The Personnel Board does not issue permits.

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

The rules are governed entirely by state statute and no federal law directly applies to the rules.

**c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**

No such analysis was received.

**12. A list of any incorporated by reference materials as specified in A.R.S. § 41-1028 and its location in the rules:**

None

**13. The full text of the rules follows:**

TITLE 2. ADMINISTRATION

CHAPTER 5.1. STATE PERSONNEL BOARD

ARTICLE 1. GENERAL PROVISIONS

Section

R2-5.1-101. Definitions

R2-5.1-102. Personnel Board Procedures

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- R2-5.1-103. Appeal Procedures  
R2-5.1-104. Complaint Procedures

ARTICLE 1. GENERAL PROVISIONS

**R2-5.1-101. Definitions**

Unless the context requires otherwise, the following definitions govern in this Chapter:

1. "Agency," for purposes of appeal from a disciplinary action, means an employing state entity that takes an appealable disciplinary action against a covered employee in covered service as defined by A.R.S. § 41-741.
2. "Appeal" means a written request filed with the Board by a permanent covered employee in covered service seeking relief from dismissal, involuntary demotion, or suspension of more than 80 working hours.
3. "Appellant" means a permanent covered employee in covered service who files an appeal with the Board.
4. "Complainant" means an employee or former employee as defined in A.R.S. § 38-531 who files a complaint with the Board.
5. "Complaint" means a written request for relief under A.R.S. § 38-532 filed with the Board by an employee or former employee ~~who believes a prohibited personnel action was taken against the employee or former employee as a result of the employee's or former employee's disclosure of information under A.R.S. § 38-532.~~
6. "Day" means a calendar day, unless otherwise stated.
7. "Deposition" means a form of discovery in which testimony of a witness ~~is~~ given under oath or affirmation; and subject to cross-examination; ~~and is~~ recorded in writing, ~~before~~ prior to a hearing.
8. "Hearing" means an administrative proceeding at which the appellant or complainant and the respondent are given the opportunity to ~~be heard by~~ present oral or written ~~presentation of~~ evidence.
9. "Hearing officer" means a person ~~employed or appointed by the Board, the Board, the Board's chair, or including any member of the Board, designated by the Board's chair acting to act~~ as the trier of fact.
10. "Respondent" means an agency or individual whose interests are adverse to those of an appellant or complainant or who will be directly affected by the Board's decision.
11. "Subpoena" means a ~~formal~~ legal document issued under authority of the Board to compel the appearance of a witness at a hearing.
12. "Subpoena duces tecum" means a legal document issued under authority of the Board to compel a witness to produce at a hearing a document or paper the witness has in his or her possession or control that is pertinent to the issues of an appeal or complaint.

**R2-5.1-102. Personnel Board Procedures**

- A.** ~~Regular meetings~~ Meetings. ~~At each public meeting, the~~ The Board shall announce the time provide public notice of the date, time, and place of its next regular monthly meeting meetings and any special, emergency, or other meetings it deems necessary. The Board shall give notice as required by law.
- B.** ~~Special meetings.~~ The chair of the Board may call special meetings of the Board. The Board shall give notice as required by law.
- C.** ~~Emergency meetings.~~ In the case of an emergency, the chair or vice chair of the Board may call a meeting. The Board shall give notice as required by law.
- D.** ~~Agenda.~~ The Board shall consider only matters placed on the agenda. The agenda shall be mailed or electronically provided, as required by law, to each member of the Board, at least five business days before the meeting a state agency indicating an interest in receiving the agenda, and all parties in a matter scheduled for a Board meeting. The Board's failure to mail or electronically provide the agenda, or failure of an agency to receive the agenda, does not affect the validity of the meeting or of any action taken by the Board at the meeting.
- E.** ~~Notice to agencies.~~ At least five business days before a meeting, the Board shall mail a copy of the agenda to a state agency indicating an interest in receiving the agenda. The Board's failure to mail the agenda, or failure of an agency to receive the agenda, does not affect the validity of the meeting or of any action taken by the Board at the meeting.
- F.** ~~Notice to parties.~~ The Board shall give notice of a meeting as required by law to all parties in a matter scheduled for a Board meeting.
- G.** ~~Minutes.~~ The Board shall record in the Board's minutes the date, time, and place of each meeting of the Board, names of the Board members present, all official acts of the Board, the votes of each Board member except when the acts are unanimous, and, when requested by a member, a member's dissent with the member's reasons. Board staff shall write the minutes and shall prepare and present the minutes for approval by the Board members at the next regular meeting. The Board shall provide copies of the approved minutes to the appellant, complainant, and respondent within seven days of the regular meeting at which the minutes are approved.

**R2-5.1-103. Appeal Procedures**

- A.** Appeal. A permanent status, covered employee who wishes to appeal a disciplinary action shall, no later than 10 business days ~~from~~ after the effective date of the action, file a written appeal with the Board in accordance with A.R.S. § 41-783.

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The appeal shall include:

1. The appellant's name, ~~address, and~~ telephone number, ~~address and e-mail address, if applicable;~~
  2. The name of the agency taking the disciplinary action being appealed;
  3. The name, ~~telephone number,~~ address, and ~~e-mail address~~ ~~telephone number~~ of the appellant's representative, if applicable;
  4. ~~The action requested of the Board; and~~
  5. ~~A specific response to the causes for disciplinary action upon which the appeal is based; and-~~
  5. ~~The action requested of the Board.~~
- B.** Change of address. ~~A party~~ An appellant or respondent shall notify the Board in writing of a change of address or telephone number within five business days of the change. If written notice is not provided, future notices by the Board that are sent to the appellant's or respondent's prior address shall be deemed to have been received.
- C.** Routing of appeal. The Board shall provide a copy of an appeal to the respondent at the respondent's last known address within five business days from the date of filing, and not less than 20 days before the hearing.
- D.** Hearing officer. The Board, including any member of the Board, ~~or the Board's chair~~ may assign an appeal or may direct staff ~~administratively~~ to assign an appeal to a hearing officer for hearing. When an appeal is assigned to a hearing officer, the hearing officer is the authorized representative of the Board and is ~~fully~~ empowered to grant or refuse extensions of time, to set proceedings for hearing, to conduct the hearing and to take any action in connection with the proceedings that the Board is authorized by law to take other than making the final findings of fact, conclusions of law, and order. The assignment of an appeal to a hearing officer does not preclude the Board, including any member of the Board, ~~or the Board's chair~~ from withdrawing the assignment and the Board conducting the hearing ~~itself~~ or from reassigning the appeal to another hearing officer.
- E.** ~~Hearing officer report. The hearing officer conducting the hearing shall write proposed findings of fact, conclusions of law, and a recommendation, as well as a brief statement of reasons for the hearing officer's findings and conclusions and shall submit to the Board the proposed findings of fact, conclusions of law, and recommendation within 30 days of the last date of the hearing.~~
- F.** ~~Conclusion of hearing. The Board shall consider the hearing concluded when it receives a copy of the hearing officer's proposed findings of fact, conclusions of law, and recommendation or, if objections are filed, on the date the objections are filed. At the discretion of the Board, the hearing officer may be, but need not be, present during the consideration of the appeal by the Board, and, if requested, shall assist and advise the Board.~~
- G.** ~~Time for hearing. The Board shall hold a hearing on an appeal within 30 days from receipt by the Board of an appeal unless the Board finds good cause to extend the time.~~
- H.** ~~Notice of hearing. The Board shall provide the appellant and respondent with written notice of the time, date, and place of hearing of an appeal, and the name of the hearing officer at least 20 days before the date of the hearing.~~
- I.** ~~Nature of hearing; rules of evidence. Every hearing shall be open to the public unless the appellant requests a confidential hearing. If the hearing involves evidence the state is precluded by law from disclosing, the Board or the Board's hearing officer shall grant a request for a confidential hearing by the respondent. The appellant, respondent, or hearing officer may request that portions of the record be sealed or adequately protected if testimony of a witness is of a sensitive nature. Any party may be self-represented or may designate a representative as provided by law. Every hearing shall be conducted in an impartial manner as a quasi-judicial proceeding. All witnesses shall testify under oath or by affirmation, and a record of the proceeding shall be made and kept by the Board for three years. Hearings shall be conducted in a manner that ascertains the substantial rights of the parties. The Board, a Board member, or a hearing officer is not bound by common law, statutory rules of evidence, or technical or formal rules of procedure, except the rule of privilege as recognized by law.~~
- J.** ~~Prehearing conference. The Board or the Board's hearing officer may require the appellant and respondent to attend a prehearing conference. Any agreements reached at that conference shall be binding at the hearing.~~
- K.** ~~Exhibits. A party introducing an exhibit shall furnish the Board or the Board's hearing officer and the opposing party with a copy of the exhibit before or at the beginning of the hearing.~~
- L.** ~~Exclusion of witnesses. Upon the motion of an appellant or respondent, the hearing officer, in the hearing officer's discretion, may exclude from the hearing room any witness who is not under examination. The hearing officer shall not include a party to the hearing or a party's representative.~~
- M.** ~~Witness fees. Witnesses, other than state employees, when subpoenaed to attend a hearing are entitled to the same fee as is allowed witnesses in civil cases in the Arizona Superior Court. If the hearing officer, on the hearing officer's own motion, subpoenas a witness, fees and mileage shall be paid from funds of the Board upon presentation of a duly executed claim. If the appellant or respondent subpoenas a witness, the fees and mileage shall be paid by the party requesting the witness. Reimbursement to state employees subpoenaed as witnesses is limited to payment of mileage by the party requesting the witness. Mileage shall be paid at the current Arizona Department of Administration reimbursement rate.~~
- N.** ~~Enforcement of subpoenas. If enforcement of a subpoena for appearance of a witness is necessary, enforcement proceedings shall be taken to Superior Court by the party requesting enforcement and enforcement shall be determined by the Superior Court and not the Board. The party requesting enforcement shall name the Board as a party to any proceedings. The Board shall follow any orders entered by the court.~~

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- O.** Depositions. Either party may request that a witness' deposition be used as evidence if the presence of a witness cannot be procured at the time of hearing. The hearing officer shall grant or deny the request.
- P.** Proposed findings of fact. Both appellant and respondent may file with the Board proposed findings of fact and conclusions of law for the benefit of the hearing officer. If either the appellant or the respondent chooses to file proposed findings of fact and conclusions of law, the filing shall take place before the conclusion of the hearing as defined in subsection (F).
- Q.** Objections to findings. The Board shall send a copy of the hearing officer's proposed findings of fact, conclusions of law, and recommendation to the appellant and respondent. The appellant or respondent may file written objections, but not post hearing evidence, to the hearing officer's proposed findings of fact or conclusions of law with the Board within 15 days from receipt of the hearing officer's proposed findings of fact and conclusions of law and shall serve copies of the objections upon the other party and the Board. The Board shall not consider untimely objections.
- R.** Personnel Board decision. Within the time required by law, the Board shall notify the appellant and respondent of the time and place of the Board meeting at which the appeal will be decided. The Board may affirm, reverse, adopt, modify, supplement, or reject the hearing officer's proposed findings of fact and conclusions of law in whole or in part, may recommit the matter to the hearing officer with instructions, may convene itself as a hearing body, or may make any other disposition of the appeal allowed by law. The Board shall make a decision on the appeal in an open meeting within 45 days after the conclusion of the hearing and shall send a copy of the decision to the appellant and respondent by certified mail, return receipt requested. If the Board orders the respondent to reinstate the appellant, it may also order the respondent to reinstate the appellant with or without back pay in the amount and for the period the Board determines to be proper.
- S.** Appeal of Board decision in court. The appellant or respondent may appeal the Board's decision to the Superior Court as provided in A.R.S. § 41-783.
- E.** Change of hearing officer. A party may request to change the hearing officer assigned to hear an appeal by filing a request in writing with the Board within five days after receipt of the first hearing notice. The request shall state the reasons for the change of hearing officer. The Board shall not grant a change of hearing officer unless the party demonstrates a clear case of bias or prejudice.
- F.** Notice of hearing. The Board shall provide the appellant and respondent with written notice of the time, date, and place of hearing of an appeal, and the name and contact information of the hearing officer at least 20 days before the date of the hearing.
- G.** Prehearing conference. The Board or the Board's hearing officer may hold a prehearing conference with the parties either in person or telephonically. Any agreement reached at the prehearing conference shall be binding at the hearing.
- H.** Time for hearing. The Board or the Board's hearing officer shall hold a hearing on an appeal within 30 days after the Board receives the appeal unless the Board or the Board's hearing officer finds good cause to extend the time pursuant to a request under this subsection. A request for continuance made within five days of the scheduled hearing date shall not be granted barring a showing of good cause. The hearing officer shall grant or deny a request for continuance.
- I.** Nature of hearing. Every hearing shall be open to the public unless the appellant requests a confidential hearing. A party may be self-represented or may designate a representative as provided by law. Every hearing shall be conducted as a quasi-judicial proceeding. All witnesses shall testify under oath or by affirmation, and a record of the proceeding shall be made and kept by the Board for three years. Hearings shall be conducted in a manner that ascertains the substantial rights of the parties. The respondent has the burden of proof and shall present its case first.
- J.** Rules of evidence. The Board or the Board's hearing officer shall grant a request for a confidential hearing made by the respondent if the hearing involves evidence the state is precluded by law from disclosing. The appellant, respondent, or hearing officer may request that portions of the record be sealed or adequately protected if testimony of a witness is of a sensitive nature. The Board or the Board's hearing officer is not bound by common law, statutory rules of evidence, or technical or formal rules of procedure, except the rule of privilege as recognized by law.
- K.** Requesting, serving, and enforcing subpoenas. A party may request a subpoena to require the attendance of a witness or a subpoena duces tecum to require the production of a document at the hearing. A party shall file with the Board a completed request for subpoena prior to the scheduled hearing date. The Board shall prepare the subpoena and return the subpoena to the requesting party for service. A person who is not a party and is at least 18 years of age may serve a subpoena. If enforcement of a subpoena for appearance of a witness is necessary, enforcement proceedings shall be taken to Superior Court by the party requesting enforcement, and enforcement shall be determined by the Superior Court. The party requesting enforcement shall name the Board as a party to any proceedings. The Board shall follow any orders entered by the court.
- L.** Exhibits. A party introducing an exhibit shall furnish the Board or the Board's hearing officer and the opposing party with a copy of the exhibit no later than 10 days prior to the hearing. A party that fails to produce a document pursuant to this subsection may be precluded, in whole or in part, from utilizing the document as evidence and the Board or the Board's hearing officer may preclude the party from introducing evidence on subjects covered by the document.
- M.** Witnesses. No later than 10 days prior to the hearing, parties shall exchange a list of the witnesses each party intends to call to testify at the hearing, along with a brief statement as to the substance and relevancy of the testimony.
- N.** Exclusion of witnesses. Upon the motion of an appellant or respondent, the hearing officer may exclude from the hearing room any witness who is not at the time under examination. The hearing officer shall not exclude a party to the hearing or

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a party's representative.

- O. Witness fees. A witness who is not a state employee and is subpoenaed to attend a hearing is entitled to the same fee as is allowed witnesses in civil cases in the Arizona Superior Court. If the hearing officer, on the hearing officer's own motion, subpoenas a witness, fees and mileage shall be paid from funds of the Board. If the appellant or respondent subpoenas a witness, the fees and mileage shall be paid by the party requesting the witness. Reimbursement to state employees subpoenaed as witnesses is limited to payment of mileage at the current Arizona Department of Administration reimbursement rate.
- P. Telephonic testimony. The appellant or respondent may request that a party or witness testify telephonically if personal attendance would present an undue hardship for the party or witness, would not cause undue prejudice to a party, and the moving party pays for the cost of obtaining the testimony telephonically. The hearing officer shall rule on the request.
- O. Deposition. A party may request that a witness' deposition be used as evidence if the presence of a witness cannot be procured at the time of hearing. The hearing officer shall grant or deny the request.
- R. Failure of a party to appear. If a party fails to appear at a hearing, the hearing officer shall allow the appearing party to present evidence.
- S. Conclusion of hearing. The Board shall consider the hearing concluded when the Board receives the hearing officer's proposed findings of fact, conclusions of law, and recommendation or, if objections are filed, on the date the objections are filed. The Board may request that the hearing officer be present during the consideration of the appeal by the Board, and, if requested, the hearing officer shall assist and advise the Board.
- T. Proposed findings of fact. Appellant and respondent may request permission to file proposed findings of fact and conclusions of law. The hearing officer shall grant or deny the request.
- U. Hearing officer report. The hearing officer shall submit written proposed findings of fact, conclusions of law, and a recommendation, including a brief statement of reasons for the hearing officer's findings and conclusions, within 30 days after the last date of the hearing. If the parties are required to file written closing arguments or briefs to the hearing officer, the hearing officer shall submit proposed findings, conclusions, recommendation, and reasons within 30 days after the closing arguments or briefs are due.
- V. Objections to findings. The Board shall send a copy of the hearing officer's proposed findings of fact, conclusions of law, and recommendation to the appellant and respondent. The appellant and respondent may file written objections, but not post-hearing evidence, to the hearing officer's proposed findings of fact and conclusions of law with the Board within 15 calendar days after receipt of the hearing officer's proposed findings of fact and conclusions of law, unless extended by the Board upon a written motion filed with the Board, and shall serve copies of the objections upon the other party. The opposing party may file a written response to the objections with the Board within 5 days or no less than 48 hours prior to a Board meeting, whichever time frame applies. The Board shall not consider untimely objections or responses.
- W. Withdrawal of appeal. An appellant may withdraw an appeal at any time prior to the decision of the Board by submitting a written withdrawal letter to the Board.
- X. State Personnel Board decision. Within the time required by law, the Board shall notify the appellant and respondent of the date, time, and place of the Board meeting at which the appeal will be decided. The Board may affirm, reverse, adopt, modify, supplement, or reject the hearing officer's proposed findings of fact and conclusions of law in whole or in part, may recommit the matter to the hearing officer with instructions, may convene itself as a hearing body, or may make any other disposition of the appeal allowed by law. The Board shall make a decision on the appeal in an open meeting within 45 days after the conclusion of the hearing and shall send a copy of the decision to the appellant and respondent by certified mail, return receipt requested. If the Board orders the respondent to reinstate the appellant, it may also order the respondent to reinstate the appellant with or without back pay in the amount and for the period the Board determined to be proper.
- Y. Appeal of Board decisions in court. The appellant or respondent may appeal the Board's decision to the Superior Court as provided in A.R.S. § 41-783.

**R2-5.1-104. Complaint Procedures**

- A. Complaint. A state An employee or former employee as defined in A.R.S. § 38-531 who wishes to file a complaint shall, no later than ~~ten~~ 10 calendar days ~~from~~ after the effective date of the alleged prohibited personnel practice that is the subject of the complaint, file a written complaint with the Board in accordance with A.R.S. § 38-532. The complaint shall include:
  - 1. The complainant's name, ~~address, and~~ telephone number, ~~address, and~~ e-mail address, if applicable;
  - 2. The name, telephone number, address, and e-mail address of the complainant's representative, if applicable;
  - ~~2-3. A clear and~~ concise statement of the facts constituting the alleged prohibited personnel practice;
  - ~~3-4. The name of the state agency or state employee believed to have knowingly committed the prohibited personnel practice; and~~
  - ~~4-5. The date and place of the alleged prohibited personnel practice; and,~~
  - 5. The name, address, and telephone number of the complainant's representative, if applicable.
- B. Change of address. A party complainant or respondent shall notify the Board in writing of a change of address or tele-

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phone number within five business days of the change. If written notice is not provided, future notices by the Board that are sent to the complainant's or respondent's prior address shall be deemed to have been received.

- C. Routing of complaint. The Board shall provide a copy of a complaint to the respondent ~~at the respondent's last known address~~ within five business days from the date of filing, and not less than 20 days before the hearing.
- D. Amending a complaint. A complainant may move to amend a complaint. An amendment shall relate only to the facts and circumstances under the original complaint and shall not relate to new causes of action. The hearing officer shall grant or deny the motion or shall refer the motion to the Board for disposition.
- E. Hearing officer. The Board, including any member of the Board, ~~or the Board's chair~~ may assign a complaint or may direct staff ~~administratively~~ to assign a complaint to a hearing officer for hearing. When a complaint is assigned to a hearing officer, the hearing officer is the authorized representative of the Board and is ~~fully~~ empowered to grant or refuse extensions of time, to set proceedings for hearing, to conduct the hearing, and to take any action in connection with the proceedings that the Board is authorized by law to take other than making the final findings of fact, conclusions of law, and order. The assignment of a complaint to a hearing officer does not preclude the Board, including any member of the Board, ~~or the Board's chair~~ from withdrawing the assignment and the Board conducting the hearing ~~itself~~ or from reassigning the complaint to another hearing officer.
- ~~F. Hearing officer report. The hearing officer conducting the hearing shall write proposed findings of fact, conclusions of law, and a recommendation, as well as a brief statement of reasons for the hearing officer's findings and conclusions and shall submit to the Board the proposed findings of fact, conclusions of law, and recommendation within 30 days of the last date of hearing.~~
- ~~G. Conclusion of hearing. The Board shall consider the hearing concluded when it receives a copy of the hearing officer's proposed findings of fact, conclusions of law, and recommendation or, if objections are filed, on the date the objections are filed. At the discretion of the Board, the hearing officer may be, but need not be, present during the consideration of the complaint by the Board, and, if requested, shall assist and advise the Board.~~
- ~~H. Time for hearing. The Board shall hold a hearing on a complaint within 30 days from receipt by the Board of a complaint unless the Board finds good cause to extend the time.~~
- ~~I. Notice of hearing. The Board shall provide the complainant and respondent with written notice of the time, date, and place of hearing of a complaint, and the name of the hearing officer at least 20 days before the date of the hearing.~~
- ~~J. Notice of hearing; rules of evidence. Every hearing shall be open to the public unless the complainant requests a confidential hearing. If the hearing involves evidence the state is precluded by law from disclosing, the Board or the Board's hearing officer shall grant a request for a confidential hearing by the respondent. The complainant, respondent, or hearing officer may request that portions of the record be sealed or adequately protected if testimony of a witness is of a sensitive nature. Any party may be self-represented or may designate a representative as provided by law. Every hearing shall be conducted in an impartial manner as a quasi-judicial proceeding. All witnesses shall testify under oath or by affirmation, and a record of the proceeding shall be made and kept by the Board for three years. Hearings shall be conducted in a manner that ascertains the substantial rights of the parties. The Board, a Board member, or a hearing officer is not bound by common law, statutory rules of evidence, or technical or formal rules of procedure, except the rule of privilege as recognized by law.~~
- ~~K. Prehearing conference. The Board or the Board's hearing officer may require the complainant and respondent to attend a prehearing conference. Any agreements reached at that conference shall be binding at the hearing.~~
- ~~L. Exhibits. A party introducing an exhibit shall furnish the Board or the Board's hearing officer and the opposing party with a copy of the exhibit before or at the beginning of the hearing.~~
- ~~M. Exclusion of witnesses. Upon the motion of a complainant or respondent, the hearing officer, in the hearing officer's discretion, may exclude from the hearing room any witness who is not under examination. The hearing officer shall not exclude a party to the hearing or a party's representative.~~
- ~~N. Witness fees. Witnesses, other than state employees, when subpoenaed to attend a hearing are entitled to the same fee as is allowed witnesses in civil cases in the Arizona Superior Court. If the hearing officer, on the hearing officer's own motion, subpoenas a witness, fees and mileage shall be paid from funds of the Board upon presentation of a duly executed claim. If the complainant or respondent subpoenas a witness, the fees and mileage shall be paid by the party requesting the witness. Reimbursement to state employees subpoenaed as witnesses is limited to payment of mileage by the party requesting the witness. Mileage shall be paid at the current Arizona Department of Administration reimbursement rate.~~
- ~~O. Enforcement of subpoenas. If enforcement of a subpoena for appearance of a witness is necessary, enforcement proceedings shall be taken to Superior Court by the party requesting enforcement, and enforcement shall be determined by the Superior Court and not the Board. The party requesting enforcement shall name the Board as a party to any proceedings. The Board shall follow any orders entered by the court.~~
- ~~P. Depositions. Either party may request that a witness' deposition be used as evidence if the presence of a witness cannot be procured at the time of hearing. The hearing officer shall grant or deny the request.~~
- ~~Q. Proposed findings of fact. Both complainant and respondent may file with the Board proposed findings of fact and conclusions of law for the benefit of the hearing officer. If either the complainant or the respondent chooses to file proposed findings of fact and conclusions of law, the filing shall take place before the conclusion of the hearing as defined in subsection~~

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- R.** Objections to findings. The Board shall send a copy of the hearing officer's proposed findings of fact, conclusions of law, and recommendation to the complainant and respondent. The complainant or respondent may file written objections, but not post-hearing evidence, to the hearing officer's proposed findings of fact or conclusions of law with the Board within 15 days from receipt of the hearing officer's proposed findings of fact and conclusions of law and shall serve copies of the objections upon the other party and the Board. The Board shall not consider untimely objections.
- S.** Personnel Board decision. Within the time required by law, the Board shall notify the complainant and respondent of the time and place of the Board meeting at which the complaint will be decided. The Board shall determine the validity of the complaint and whether a prohibited personnel practice was committed against the employee or former employee as a result of the employee or former employee's disclosure of information of a matter of public concern. If the Board determines a prohibited personnel practice was committed as a result of disclosure of information by the employee or former employee, the Board shall act in accordance with the requirements of A.R.S. § 38-532.
- T.** Appeal of Board decision in court. The complainant or respondent may appeal the Board's decision to the Superior Court as provided in A.R.S. § 38-532.
- F.** Change of hearing officer. A party may request to change the hearing officer assigned to hear a complaint by filing a request in writing with the Board within five days after receipt of the first hearing notice. The request shall state the reasons for the change of hearing officer. The Board shall not grant a change of hearing officer unless the party demonstrates a clear case of bias or prejudice.
- G.** Notice of hearing. The Board shall provide the complainant and respondent with written notice of the time, date, and place of hearing of a complaint, and the name and contact information of the hearing officer at least 20 days before the date of the hearing.
- H.** Prehearing conference. The Board or the Board's hearing officer may hold a prehearing conference with the parties either in person or telephonically. Any agreement reached at the prehearing conference shall be binding at the hearing.
- I.** Time for hearing. The Board or the Board's hearing officer shall hold a hearing on a complaint within 30 days after the Board receives the complaint unless the Board or the Board's hearing officer finds good cause to extend the time pursuant to a request under this subsection. A request for continuance made within five days of the scheduled hearing date will not be granted barring a showing of good cause. The hearing officer shall grant or deny a request for continuance.
- J.** Nature of hearing. Every hearing shall be open to the public unless the complainant requests a confidential hearing. A party may be self-represented or may designate a representative as provided by law. Every hearing shall be conducted as a quasi-judicial proceeding. All witnesses shall testify under oath or by affirmation, and a record of the proceeding shall be made and kept by the Board for three years. Hearings shall be conducted in a manner that ascertains the substantial rights of the parties. The complainant has the burden of proof and shall present its case first.
- K.** Rules of evidence. The Board or the Board's hearing officer shall grant a request for a confidential hearing made by the respondent if the hearing involves evidence the state is precluded by law from disclosing. The complainant, respondent, or hearing officer may request that portions of the record be sealed or adequately protected if testimony of a witness is of a sensitive nature. The Board or the Board's hearing officer is not bound by common law, statutory rules of evidence, or technical or formal rules of procedure, except the rule of privilege as recognized by law.
- L.** Requesting, serving, and enforcing subpoenas. A party may request a subpoena to require the attendance of a witness or a subpoena duces tecum to require the production of a document at the hearing. A party shall file with the Board a completed request for subpoena prior to the scheduled hearing date. The Board shall prepare the subpoena and return the subpoena to the requesting party for service. A person who is not a party and is at least 18 years of age may serve a subpoena. If enforcement of a subpoena for appearance of a witness is necessary, enforcement proceedings shall be taken to Superior Court by the party requesting enforcement, and enforcement shall be determined by the Superior Court. The party requesting enforcement shall name the Board as a party to any proceedings. The Board shall follow any orders entered by the court.
- M.** Exhibits. A party introducing an exhibit shall furnish the Board or the Board's hearing officer and the opposing party with a copy of the exhibit no later than 10 days prior to the hearing. A party that fails to produce a document pursuant to this subsection may be precluded, in whole or in part, from utilizing the document as evidence and the Board or the Board's hearing officer may preclude the party from introducing evidence on subjects covered by the document.
- N.** Witnesses. No later than 10 days prior to the hearing, parties shall exchange a list of the witnesses each party intends to call to testify at the hearing, along with a brief statement as to the substance and relevancy of the testimony.
- O.** Exclusion of witnesses. Upon the motion of a complainant or respondent, the hearing officer may exclude from the hearing room any witness who is not at the time under examination. The hearing officer shall not exclude a party to the hearing or a party's representative.
- P.** Witness fees. A witness who is not a state employee and is subpoenaed to attend a hearing is entitled to the same fee as is allowed witnesses in civil cases in the Arizona Superior Court. If the hearing officer, on the hearing officer's own motion, subpoenas a witness, fees and mileage shall be paid from funds of the Board. If the complainant or respondent subpoenas a witness, the fees and mileage shall be paid by the party requesting the witness. Reimbursement to state employees subpoenaed as witnesses is limited to payment of mileage at the current Arizona Department of Administration reimburse-

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ment rate.

- Q.** Telephonic testimony. The complainant or respondent may request that a party or witness testify telephonically if personal attendance would present an undue hardship for the party or witness, would not cause undue prejudice to a party, and the moving party pays for the cost of obtaining the testimony telephonically. The hearing officer shall rule on the request.
- R.** Deposition. A party may request that a witness' deposition be used as evidence if the presence of a witness cannot be procured at the time of hearing. The hearing officer shall grant or deny the request.
- S.** Failure of a party to appear. If a party fails to appear at a hearing, the hearing officer shall allow the appearing party to present evidence.
- T.** Conclusion of hearing. The Board shall consider the hearing concluded when the Board receives the hearing officer's proposed findings of fact, conclusions of law, and recommendation or, if objections are filed, on the date the objections are filed. The Board may request that the hearing officer be present during the consideration of the complaint by the Board, and, if requested, the hearing officer shall assist and advise the Board.
- U.** Proposed findings of fact. Complainant and respondent may request permission to file proposed findings of fact and conclusions of law. The hearing officer shall grant or deny the request.
- V.** Hearing officer report. The hearing officer shall submit written proposed findings of fact, conclusions of law, and a recommendation, including a brief statement of reasons for the hearing officer's findings and conclusions, within 30 days after the last date of the hearing. If the parties are required to file written closing arguments or briefs to the hearing officer, the hearing officer shall submit proposed findings, conclusions, recommendation, and reasons within 30 days after the closing arguments or briefs are due.
- W.** Objections to findings. The Board shall send a copy of the hearing officer's proposed findings of fact, conclusions of law, and recommendation to the complainant and respondent. The complainant and respondent may file written objections, but not post-hearing evidence, to the hearing officer's proposed findings of fact and conclusions of law with the Board within 15 calendar days after receipt of the hearing officer's proposed findings of fact and conclusions of law, unless extended by the Board upon a written motion filed with the Board, and shall serve copies of the objections upon the other party. The opposing party may file a written response to the objections with the Board within 5 days or no less than 48 hours prior to a Board meeting, whichever time frame applies. The Board shall not consider untimely objections or responses.
- X.** Withdrawal of complaint. A complainant may submit a written request to withdraw a complaint at any time prior to the decision of the Board. The Board shall rule on the request.
- Y.** State Personnel Board decision. Within the time required by law, the Board shall notify the complainant and respondent of the date, time, and place of the Board meeting at which the complaint will be decided. The Board may affirm, reverse, adopt, modify, supplement, or reject the hearing officer's proposed findings of fact and conclusions of law in whole or in part, may recommit the matter to the hearing officer with instructions, may convene itself as a hearing body, or may make any other disposition of the complaint allowed by law. The Board shall determine the validity of the complaint and whether a prohibited personnel practice was committed against the employee or former employee as a result of the employee or former employee's disclosure of information of a matter of public concern. The Board shall make a decision on the complaint in an open meeting within 45 days after the conclusion of the hearing and shall send a copy of the decision to the complainant and respondent by certified mail, return receipt requested. If the Board determines a prohibited personnel practice was committed as a result of a disclosure of information by the employee or former employee, the Board shall act in accordance with the requirements of A.R.S. § 38-532.
- Z.** Appeal of Board decisions in court. The complainant or respondent may appeal the Board's decision to the Superior Court as provided in A.R.S. § 38-532.